IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID MACK, on behalf of	)	1:10-cv-4244
himself and others similarly situated,	)	
Plaintiffs,	)	Judge Hibbler
v.	)	Magistrate Judge Keys
	)	
MRS ASSOCIATES, INC.,	)	JURY TRIAL DEMANDED
Defendant.	)	

MOTION TO CONTINUE DATE TO AMEND PLEADINGS AND FOR CLASS CERTIFICATION

Plaintiff respectfully requests that this Court continue the date to amend pleadings, and the date by which plaintiff must file his revised motion for certification. In support of this motion, plaintiff states:

1. This is a Telephone Consumer Protection Act, 47 U.S.C. § 227(b) case, arising out of the defendant debt collector calling persons on their cellular telephones using automatic telephone dialers and prerecorded messages. MRS Associates, Inc. called plaintiff David Mack, the son of the alleged debtor, thirty-six times. MRS called David's brother, Christopher Mack approximately fifty times in relation to his mother's debt, and approximately 175 times in relation to other debts, using the proscribed equipment.

2. According to Judge Hibbler's scheduling order, the last date for amendments to pleadings is January 25, 2011. According to a schedule filed by the parties, plaintiff is to file his revised motion for class certification on January 28, 2011.

3. As indicated in plaintiff's motion to compel discovery filed January 11, 2011, defendant has refused to provide a class list, and has refused to provide evidence of its affirmative defenses to plaintiff's counsel.

4. Indeed, although it committed to providing certain information by January 21, 2011, at presentment of plaintiff's motion to compel, and offered this commitment in order to persuade the Court to delay deciding the motion, it has not yet provided this information to plaintiff. Defendant tells plaintiff's counsel that it is working on sorting data.

5. In the meantime, however, defendant has had time to make two individual "pick-off" settlement offers to David Mack, urging him to "sell out" the class for substantial personal gain. One offer was for $40,000, and the second offered even more money to Mr. Mack, personally. To his credit, Mr. Mack has rejected those offers.

6. Plaintiff requests that the Court continue the date for amendments of pleadings so that he may add additional plaintiffs, if appropriate, and particularly if MRS' future attempts to buy off plaintiffs in the future are successful.

7. Further, this Court may recall that former Christopher Mack's claims were dismissed by stipulation without prejudice a few weeks ago. This happened because defendant took the position that all of Christopher Mack's claims were the property of the trustee, because Christopher Mack filed a Chapter 7 bankruptcy in early 2010.

8. However, after consulting with bankruptcy counsel, plaintiff's counsel expects to request leave to add Christopher Mack back into the case, because MRS made several telephone calls after the date Mr. Mack filed for bankruptcy. Plaintiff's counsel now believes that 11 U.S.C. § 541 states that claims and assets that arise after a debtor's bankruptcy filing date do not become the property of the estate, and the debtor is free to raise such claims as his own.

9. Plaintiff's counsel may also wish to amend the class definition, and/or add subclasses. However, he does not have the class information necessary to do so.

10. This motion is brought for the reasons herein, and not for purposes of delay or any other improper reason.

WHEREFORE, plaintiff respectfully requests that this Court continue the date within which he must amend his pleadings, and file his revised motion for class certification, until the motion to compel has been decided, and plaintiff has the necessary discovery to file these documents.

Respectfully submitted,

/s/Alexander H. Burke

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